

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

CARL M. MILLER,

Plaintiff,

-v-

**NOTICE OF REMOVAL OF
ACTION (28 U.S.C. §1441(b))
Federal Question**

NYS Index No. 811385/2017

Civil Docket #

COUNTY OF ERIE,
DEPARTMENT OF SHERIFF OF ERIE COUNTY,
TIMOTHY B. HOWARD, Erie County Sheriff,
THOMAS DIINA, Superintendent,
LIEUTENANT KRZYSZTOF KANIA,
SARGENT CHRISTIAN J. SUNDBERG,
OFFICER DEANNA J. LATES,
LIEUTENANT KAREN A. YETZER,
OFFICER KEITH L. ROBERTS,
SARGENT RICHARD J. ZOZACZKA,
OFFICER D. PAUL ROBINSON,
OFFICER TIMOTHY M. WANAT,
DAVIS JULIAN, P.A.,
JAMES THOMAS,
JOSEPH DAMICO,
ARIEL SIMMS,
ROBERT GIBBENS, R.N.,
MAXIM HEALTHCARE SERVICES, INC., and
JOHN DOES 1-10,

Defendants.

TO THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441(b) and 1446, defendants,
THE COUNTY OF ERIE, DEPARTMENT OF SHERIFF OF ERIE COUNTY, TIMOTHY B.
HOWARD, Erie County Sheriff, THOMAS DIINA, Superintendent, LIEUTENANT
KRZYSZTOF KANIA, SARGENT CHRISTIAN J. SUNDBERG, OFFICER DEANNA J.
LATES, LIEUTENANT KAREN A. YETZER, OFFICER KEITH L. ROBERTS, SARGENT

RICHARD J. ZOZACZKA, OFFICER D. PAUL ROBINSON, OFFICER TIMOTHY M. WANAT, DAVIS JULIAN, P.A., and ROBERT GIBBENS, R.N., hereby remove to this Court the civil action filed in the Supreme Court of the State of New York, County of Erie, as described below.

On August 17, 2017, Plaintiff, CARL MILLER, filed a civil action entitled against THE COUNTY OF ERIE, DEPARTMENT OF SHERIFF OF ERIE COUNTY, TIMOTHY B. HOWARD, Erie County Sheriff, THOMAS DIINA, Superintendent, LIEUTENANT KRZYSZTOF KANIA, SARGENT CHRISTIAN J. SUNDBERG, OFFICER DEANNA J. LATES, LIEUTENANT KAREN A. YETZER, OFFICER KEITH L. ROBERTS, SARGENT RICHARD J. ZOZACZKA, OFFICER D. PAUL ROBINSON, OFFICER TIMOTHY M. WANAT, DAVIS JULIAN, P.A., and ROBERT GIBBENS, R.N., Case Index Number: 811385/2017, in the Supreme Court for the State of New York, County of Erie.

Between August 22, 2017 and September 5, 2017, Plaintiff served the Summons and Complaint in the above-referenced state court action. Copies of all relevant process and pleadings in this state court action are attached hereto as **Exhibit A**. Copies of the Affidavits of Service are attached as **Exhibit B**.

No further proceedings have been had in the state court action. Plaintiff's Complaint contains an unspecified cause of action pursuant to 42 U.S.C. §1983, alleging that the County defendants violated the Plaintiff's federally secured Constitutional rights.

Accordingly, this Court has original jurisdiction over the state court action under 28 U.S.C. §1331 (federal question) because it is a civil action that arises under the Constitution, laws, or treaties of the United States.

No previous application has been made for the relief requested herein.

**DATED: Buffalo, New York
September 18, 2017**

Respectfully submitted,

**MICHAEL A. SIRAGUSA
Erie County Attorney and Attorney for Defendant,**

**By:/s/ Anthony B. Targia
ANTHONY B. TARGIA, ESQ.
Assistant County Attorney, of Counsel
95 Franklin Street, Room 1634
Buffalo, New York 14202**

**TO: Leonard D. Zaccagnino, Esq.
Shaw & Shaw, P.C.
Attorneys for Plaintiff
4819 South Park Avenue
Hamburg, New York 14075
(716) 648-3020**

**Index of Documents
Filed in State Court, Prior to Removal**

Document

Date of Filing

A. Summons and Complaint

August 17, 2017

B. Affidavits of Service

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2017, I mailed the foregoing, by the United States Postal Service, to the following :

Leonard D. Zaccagnino, Esq.
Shaw & Shaw, P.C.
4819 South Park Avenue
Hamburg, New York 14075

JAMES THOMAS
c/o Erie County Holding Center
10 Delaware Avenue
Buffalo, New York 14202

JOSEPH DAMICO
c/o Greene Correctional Facility
165 Plank Road
Coxsackie, New York 12051

ARIEL SIMMS
1457 East Delavan Avenue #2
Buffalo, New York 14215

MAXIM HEALTHCARE SERVICES, INC.
7227 Lee DeForest Drive
Columbia, MD 21046

Dated: Buffalo, New York
September 18, 2017

By: s/ Anthony B. Targia
Anthony B. Targia, Esq.
Assistant County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14203
Email: Anthony.Targia@erie.gov